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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(San Francisco Division)

IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION THIS DOCUMENT RELATES TO: All Class Actions Against MCI Defendants and Verizon Defendants	MDL Docket No. 06-1791 (VRW) **MCI AND VERIZON CLASS PLAINTIFFS' OPPOSITION TO VERIZON'S ADMINISTRATIVE MOTION TO EXCEED PAGE LIMITS** [Civ. L.R. 7-11(b)] Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker

Dockets.Justia.com

Verizon seeks leave to file a 95-page brief, nearly *four times* the 25-page limit set by Local Rule 7-4(b). Verizon states that a mere 15 pages of its brief "will address the state-secrets doctrine, and then only to address points that were not fully developed in the *Hepting* case." Motion at 1. Indeed, this is the brief that Verizon *should* have filed in response to the Court's November 22, 2006 Pretrial Order No. 1, which required "[a]ll parties to SHOW CAUSE in writing why the *Hepting* order should not apply to all cases and claims to which the government asserts the state secrets privilege."

Verizon proposes to devote approximately 80 pages of its proposed 95-page brief to the following arguments: (1) that Verizon has a First Amendment right to turn over the telecommunications records of its customers to the federal government in violation of multiple federal statutes; (2) that separation-of-powers principles render these statutes unconstitutional; and (3) that the MCI/Verizon Master Complaint does not allege a "divulgence" of records, and/or that such divulgence was authorized under statutory exceptions for an "emergency" or protecting MCI/Verizon's "rights or property." To these arguments, Verizon would append an amorphous discussion — apparently untethered to any legal argument — of "the proper sphere of state authority in national security matters, . . . the scope and application of Title III, the Foreign Intelligence Surveillance Act, and sections 605 and 222 of the Communications Act." Motion at 2.[1]

MCI/Verizon Plaintiffs respectfully submit that the above-enumerated arguments can be made within the confines of an ordinary, 25-page brief. Accordingly, MCI/Verizon Plaintiffs propose that Verizon be allowed to file a brief of not more than 40 pages (including the estimated fifteen pages devoted to "state secrets" issues). However many pages the Court allows, MCI/Verizon Plaintiffs request an equal amount for their opposition.

[1] To this list, Verizon adds "the merits of Plaintiffs' 'consumer protection' claims . . . ." Motion at 2. MCI/Verizon Plaintiffs have repeatedly offered to defer briefing on their purely state law claims as unnecessary at this juncture, but Verizon has repeatedly rejected this offer, which remains open.

Dated: March 21, 2007

Respectfully submitted,

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Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document has been obtained from Jodi W. Flowers.